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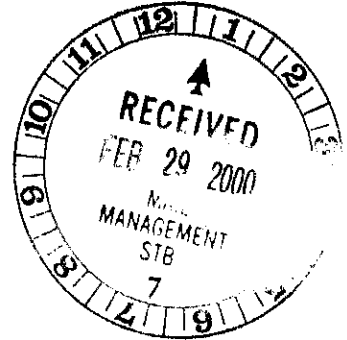
February 28, 2000

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attention: **STB Ex Parte No. 582**
1925 K Street N.W.
Washington, DC 20423-0001
U.S.A.

ENTERED
Office of the Secretary

FEB 29 2000

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Public Record



Dear Sirs:

**RE: PUBLIC VIEWS OF MAJOR RAIL CONSOLIDATIONS - EX PARTE NO. 582
- WESTERN CANADIAN SHIPPERS' COALITION**

Pursuant to the above referenced Decision of the Surface Transportation Board (the Board), the Western Canadian Shippers' Coalition (WCSC) hereby confirms its intent to participate in the Public Hearings which will now take place March 7th to 10th, 2000 at the Board's offices in Washington, DC.

I plan to appear before the Board at the Public Hearings on Tuesday, March 7th on behalf of the WCSC and will be speaking to the enclosed paper. Included with this letter are the following:

- an original and 10 copies of a written submission prepared on behalf of the WCSC, and
- a copy of the written submission on diskette (an electronic copy is available via e-mail by contacting Ann Hansen at hansen@cofi.org).

If you require further information, please contact me at tel. (604) 891-1274 or via e-mail at may@cofi.org.

Yours truly,

Ian May
Chair, WCSC



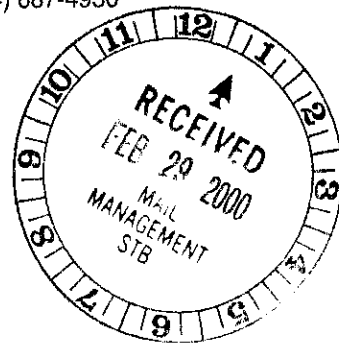
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BEFORE THE SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

**SUBMISSION OF THE
WESTERN CANADIAN SHIPPERS' COALITION (WCSC)**

1200 - 555 Burrard Street
Vancouver, B.C. V7X 1S7 Canada

PRESENTATION DATE: MARCH 7, 2000
WASHINGTON, DC

BEFORE THE SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

SUBMISSION OF THE WESTERN CANADIAN SHIPPERS' COALITION (WCSC)

PRESENTATION DATE: MARCH 7, 2000

The WCSC welcomes the opportunity to appear before the Surface Transportation Board (STB) to express the views of its members on the subject of Major Rail Consolidations and the present and future structure of the North American Railroad Industry.

WCSC

The WCSC is an organization of Western Canadian companies and associations representing much of the resource based economy in Western Canada. WCSC members are major users of transportation services, primarily the railways, and spend over \$2 billion annually transporting coal, sulphur, chemicals, oilseed products and forest products to markets in Canada, the United States and around the world. Our members represent more than 200 companies in Western Canada.

Currently, the WCSC membership includes:

- Alberta Newsprint Company,
- Canadian Oilseed Processors Association,
- Council of Forest Industries,
- Inland Cement Ltd.,
- Luscar Ltd.,
- Millar Western Group,
- Nova Chemicals Ltd., and
- Sultran Ltd.

One of the most significant costs incurred by WCSC members is rail transportation which in many cases comprises as much as 50% of the selling price of their products.

Minimizing transportation costs is essential to our members as these costs have a significant impact on the competitiveness of their products in end markets. The most reliable way of obtaining the lowest possible freight rates is through effective railway competition. Accordingly, the WCSC has worked for and supported a rail reform process that will promote competition and result in improved railway productivity and efficiency.

THE ISSUE

The proposed BNSF/CN combination is not the first consolidation of a Canadian and a U.S. railway company, the most recent example being the *Canadian National Railway Company/Illinois Central Corp.* consolidation. Previous consolidations, however, are not at all comparable to the proposed BNSF/CN consolidation which will create the largest rail system in North America.

The WCSC believes that the proposed BNSF/CN combination will be the catalyst for further restructuring of the railway industry in Canada and the United States. In that event, shippers reliant upon rail service will be deprived of effective, competitive choices for the transportation of their freight.

In an Open Letter To Railroad Customers, published earlier this year, the President and Chief Executive Officer of Canadian Pacific Railway and the Chairman, President and Chief Executive Officers of Union Pacific Corporation, CSX Corporation and Norfolk Southern Corporation expressed serious concerns with the potential impact of the BNSF/CN combination on the future structure of the rail industry. They agreed with the STB that this proposed merger may trigger another round of railroad combinations resulting in two large rail systems serving North America. Should the BNSF/CN combination be allowed to proceed, there will be downstream effects which will have a direct impact on railway choices for shippers in Canada and the United States.

1. RAILWAY DUOPOLY = DUAL MONOPOLY

While the WCSC is aware of the STB's position that a railroad duopoly constitutes competition, the Canadian involvement with a railway duopoly leads to a different conclusion. Our history with CN and CP has convinced us of their selectivity as to when and under what circumstances competition will occur. A railway duopoly as experienced in Canada is in reality, a dual monopoly. Consequently the prospect of two large rail systems serving North America is a matter of great concern to our members.

In Canada, a railway duopoly (dual monopoly) is not synonymous with railway competition. Through this dual monopoly, the railways are able to frustrate competitive alternatives by simply declining to compete with each other. We believe that a North American dual monopoly will have no incentive to operate differently than it has in Canada with the result that a shipper's access to the benefits of effective competition will be severely curtailed if not eliminated. It is not in the economic self-interest of a dual railway monopoly to engage in competitive pricing or more favourable service arrangements when a shipper is physically captive to one railway.

Our members are convinced there is no substitute for actual railway competition manifested by a number of rail carriers vying for a healthy share of our transportation business. The resultant rates and service options are essential for survival in our global marketplace.

2. THE CANADIAN EXPERIENCE

Recognizing the competitive limitations a dual railway monopoly provides, the Parliament of Canada has enacted certain provisions in an attempt to encourage competition. The *Canada Transportation Act* provides for regulated interswitching which involves the transfer of traffic from the lines of one railway company to the lines of another. Where a shipper is served by only one railway company, he is entitled to transfer his traffic to another at a regulated rate set by the Canadian Transportation Agency, if that railway

connects at any point within a 30 kilometre radius of the shipper's plant or facility (interswitching limits).

Unfortunately, CN and CP will only compete for traffic where both railways serve a shipper's facility or where a second railway is located within interswitching limits. The vast majority of our members are captive to one railway company at their facilities and do not have a second located anywhere near interswitching limits.

In 1988, Parliament enacted a competitive line rate (CLR) remedy which is basically an extended interswitching provision. A CLR may be obtained if it does not exceed 1200 kilometres or 50% of the total distance over which the traffic is moved by rail, whichever is greater. Where a plant is served by only one railway at origin, the railway customer may negotiate with another railway for a rate and the terms and conditions of the movement of its traffic from the nearest interchange with the originating carrier to the destination. The originating carrier is then required to establish a rate from the origin to that interchange by agreement with the shipper or, failing an agreement, the Canadian Transportation Agency will establish a rate as prescribed by the legislation. That is known as the "CLR".

While the CLR was seen as the mechanism which would provide a Canadian shipper with access to the other major railway company, it cannot be utilized by shippers because CN and CP have refused to compete for traffic utilizing that remedy. The only time a CLR has been utilized was on trans-border traffic from Canada to the United States because of the willingness of Burlington Northern to compete for traffic by means of this remedy. The BNSF/CN consolidation will eliminate a railroad that has provided competition to Western Canadian shippers.

The refusal of CN and CP to compete for CLR traffic is not just a conclusion of the WCSC. In the 1993 report of the National Transportation Act Review Commission

looking at Competition In Transportation, the Commission concluded at page 131 of its report:

“CN and CP Rail have effectively declined to compete with each other through CLR’s, and as a result the provision is largely inoperative in Canada.”

The bottom line is that the CLR provision has not been effective because of CN’s and CP’s refusal to compete for traffic beyond the 30 kilometre interswitching limit. As a result these remedies have not been effective when the railways have chosen not to utilize them.

3. THAT THE STB DEAL WITH THE PROPOSED BNSF/CN COMBINATION WITHOUT REGARD TO THE CANADA/US BORDER.

The WCSC urges the STB to consider the proposed combination in its totality and require the production of all relevant data relating to Canadian railway operations as well as operations in the U.S. The sheer magnitude of this proposed consolidation requires that the Operating Plan, to be filed by BNSF/CN, apply to the entire rail system. Without such data, the full effects of the proposed transaction cannot be adequately determined.

The development of a full record is particularly significant with respect to this proposed combination in view of the likely impact it will have on further consolidation of the North American railroad industry. Shippers need a full record to make meaningful assessments respecting railway choices which will be available to them. Our members consider effective railway competition to be essential in controlling the freight rates they pay and to protect and enhance their service levels.

The WCSC accordingly submits that a full record encompassing Canadian as well as U.S. rail operations be ordered.

4. COORDINATION AND EXCHANGE OF DATA.

The WCSC requests that a procedure be established which will allow the STB to coordinate and exchange the data it receives with Canadian authorities considering the impacts of the proposed BNSF/CN consolidation.

We have been informed that a full investigation will be conducted by the Commissioner of Competition pursuant to the relevant provisions of the Canadian *Competition Act*. The WCSC is also requesting that the Minister of Transport utilize his powers under Section 49 of the *Canada Transportation Act* to direct the Canadian Transportation Agency to inquire into the impacts of the proposed BNSF/CN consolidation on railway competition in Canada and on the users of railway transportation. Should such an inquiry be initiated, the Canadian Transportation Agency will be required to develop an appropriate record of its own. The exchange of data between authorities in Canada and the STB will prove helpful in enabling each jurisdiction to more fully and appropriately consider the impact of this proposed consolidation on the railway system within each country.

The WCSC is not advocating a formalized procedure. An orderly exchange of information obtained from the record in the relevant proceedings in each country makes good sense and will enhance the likelihood of fully informed, well reasoned determinations in the U.S. and Canada with respect to this significant issue.

CONCLUSION

The WCSC submits that the experience of its members and other Canadian shippers with railway competition in Canada is far from satisfactory. Based on our experience in Canada, a railway duopoly is no guarantee of railway competition; it is in reality a dual monopoly. CN and CP refuse to compete for traffic despite legislative provisions designed to accomplish that end. The chance of competition occurring is in direct proportion to the number of competitors in the field.

The WCSC also submits that the magnitude of the BNSF/CN combination and its likely impacts on further consolidation in the North American railway industry, requires a full and complete record which is unencumbered by national boundaries. An understanding of the full impact of the proposed combination both in Canada and the United States can only be achieved through analysis of data that is North American in scope.

The WCSC further submits there be an exchange of data obtained in the record of proceedings both in Canada and the U.S. to enable both jurisdictions to fully understand the impacts of the proposed combination on railway consolidation in North America. The STB is urged to participate in this cooperative endeavour.

All of which is respectfully submitted this 28th of February, 2000.